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Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

JOHNATHAN ANDREW DOODY,
Petitioner,

--against--

THE STATE OF ARIZONA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS,
STATE OF ARIZONA

PETITION FOR A WRIT OF CERTIORARI

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82 pp

ISSUES PRESENTED FOR REVIEW

I. Whether a flexible standard should apply in assessing whether Miranda warnings given to a juvenile are adequate and whether warnings are adequate where the officers bury them in 15 minutes of distracting patter, expressly downplay their importance, and, in "explaining" the right to counsel, suggest that it "would apply" if the defendant were involved in a crime.

II. Where there was evidence that the same police officers had participated in the interrogation of at least four other unrelated persons and had obtained confessions from them to the same murders -- which confessions the State maintained were false and involuntary -- whether the refusal to permit the defendant to argue to the jury that those confessions cast doubt on the veracity and voluntariness of his own confession violated the defendant's rights to present a defense under the Due Process Clause and under Crane v. Kentucky.

TABLE OF CONTENTS

ISSUES PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION OF THIS COURT 1

CONSTITUTIONAL PROVISIONS INVOLVED . . 1

STATEMENT OF FACTS 1

REASONS WHY THE PETITION SHOULD BE GRANTED 12

I. THIS CASE RAISES SIGNIFICANT QUESTIONS ABOUT THE STANDARD TO BE USED IN ASSESSING THE ADEQUACY OF NON-STANDARD MIRANDA WARNINGS GIVEN TO JUVENILES AND ABOUT THE ADEQUACY OF WARNINGS THAT, INTER ALIA, DOWNPLAY THEIR IMPORTANCE . . . 12

II. THE COURT SHOULD DECIDE WHETHER PETITIONER'S RIGHTS UNDER CRANE V. KENTUCKY AND THE DUE PROCESS CLAUSE WERE VIOLATED WHEN THE TRIAL COURT RULED THAT HE COULD NOT ARGUE TO THE JURY, USING THE TUCSON FOUR CONFESSIONS, THAT HIS OWN CONFESSION, LIKE THEIRS, WAS INVOLUNTARY AND FALSE . . . 16

CONCLUSION 22

APPENDIX

OPINION OF THE COURT OF APPEALS STATE OF ARIZONA DIVISION ONE App-1

ORDER OF THE SUPREME COURT DENYING PETITION FOR REVIEW DATED JANUARY 14, 1997 . . . App-38

TRANSCRIPT OF INTERVIEW OF JOHNATHAN DOODY DATED OCTOBER 25, 1991 (ADMINISTRATION OF MIRANDA WARNINGS) App-40

TABLE OF AUTHORITIES

CASES

California v. Prysock,
453 U.S. 355 (1981) 12

Chambers v. Mississippi,
410 U.S. 284 (1973) 17

Crane v. Kentucky,
476 U.S. 683 (1986) . 10, 11, 16, 17, 20

Duckworth v. Eagan,
492 U.S. 195 (1989) 13

Fare v. Michael C.,
442 U.S. 707 (1979) 14

Gallegos v. Colorado,
370 U.S. 49 (1962) 15

In re Gault,
387 U.S. 1 (1967) 15

Haley v. Ohio,
332 U.S. 596 (1948) 15

Herring v. New York,
422 U.S. 853 (1975) 17, 18

Miranda v. Arizona,
384 U.S. 436 (1966) 14

Oregon v. Estad,
470 U.S. 298 (1985) 14

Rhode Island v. Innis,
446 U.S. 291, 297 (1980) 12

Washington v. Texas,
388 U.S. 14 (1967) 17

Withrow v. Williams,
507 U.S. 680 (1993) 15

MISCELLANEOUS

ABA Standards for Criminal
Justice: The Defense Function
(Approved Draft, 1971) § 7.8(a) . . . 18

S. Greenburg "Learning Disabled
Juveniles and Miranda Rights
-- What Constitutes Voluntary,
Knowing and Intelligent Waiver,"
21 Golden Gate U.L. Rev. 487
(1991) 14

T. Grisso, Juveniles' Waiver of
Rights: Legal and Psychological
Competence (1981) 14

Y. Kamisar, W. LaFave, J. Israel,
Modern Criminal Procedure (1986) . 13, 14

E. Maykut, "Who is Advising Our
Children: Custodial Interrogation
of Juveniles in Florida," 21 Fla.
St. U.L. Rev. 1345 (1994) 14

J. A. Stein, Closing Argument:
The Art and the Law § 12 (1996) . . 18

OPINIONS BELOW

The decision of the Arizona Court of Appeals is reported at 930 P.2d 440 (1996), and is reproduced in the Appendix at App. 1.

JURISDICTION OF THIS COURT

The decision of the Arizona Court of Appeals was filed on September 5, 1996. A timely Petition for Review was denied by the Arizona Supreme Court by order dated January 14, 1997. (App. 38).

This Court has jurisdiction to review the judgment of the Arizona Court of Appeals by certiorari pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amdt. V, provides, in relevant part:

> No person ... shall be compelled in any criminal case to be a witness against himself...

U.S. Const., Amdt. XIV, provides, in relevant part:

> ... nor shall any state deprive any person of life, liberty, or property, without due process of law...

STATEMENT OF FACTS

Johnathan Doody, a minor when the events at issue occurred, was charged with premeditated murder and felony murder in connection with the shooting deaths of nine individuals, including six Thai Buddhist

monks, at the Wat Promkunaram Buddhist Temple, outside Phoenix, Arizona, in August of 1991. All of the victims had been shot in the back of the head with a rifle. The Temple had been ransacked, but virtually no physical evidence was recovered from the crime scene. A Task Force was quickly assembled to handle what was considered the biggest homicide case in Arizona history. Understandably, the authorities were under tremendous pressure to solve the case.

A month after the killings, based on a tip, four men from Tucson were brought to Task Force headquarters for questioning. The men -- who came to be known as the "Tucson Four" -- each confessed to the murders after lengthy interrogations by Task Force officers. By October 3, all four had been charged with the murders.

The following month, the authorities identified the murder weapon, which belonged to one Rolando Caratachea, and an all-out effort was commenced to link this rifle to the Tucson Four. Caratachea maintained that he had loaned the rifle to two Phoenix teenagers -- Alex Garcia and the Petitioner -- shortly before the Temple killings. Garcia, a close friend of Caratachea, was brought in for questioning. He confessed to involvement, said that a number of others were involved, and placed primary blame on Petitioner, claiming the crime was Petitioner's idea, and that Petitioner had fired all of the fatal shots.

Petitioner was a quiet, deferential[1] high school student of Thai descent with no prior experience with the police or the criminal justice system.[2] He was brought

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[1] An important aspect of the Thai culture in which he was raised, see n.2 infra, is strong deference both to older persons and to authority.

[2] Information presented for purposes of sentencing showed that Petitioner was born in 1974, and spent his first five years with his mother and father, both Thai, in Korat Province, Thailand. When he was five, his father died suddenly, bleeding from his ears, mouth and nose in front of his terrified son. Unable to cope with her grief, Petitioner's mother left Thailand less than a month later, leaving Petitioner in the care of an aunt who lived outside Bangkok. Petitioner's mother went to Germany, where a sister of hers married to an American serviceman was living. For three years, there was no contact between Petitioner and his mother. In Germany, she met and married Brian Doody, an American serviceman, though they shared no common language. In July of 1982, without giving Johnathan any warning, the couple returned to Thailand, and took him back to Germany the next day. They spent the next year and a half there. Brian Doody was then transferred to Georgia, where he adopted Petitioner, and gave him his name. The family remained in Georgia, when Brian Doody was sent to Korea. A year later, Brian was transferred to Guam, and the family joined him there. In 1989, Brian was transferred to Luke Air Force base, in Arizona, where the family was living at the time of the Temple killings. The interrogation tapes, as well as information

to Task Force headquarters for questioning that same night. His interrogation began at 9:25 P.M. and continued, non-stop, until after 10:00 the next morning. The interrogation was conducted by relays of Task Force officers, and primarily by Detectives Patrick Riley, Rick Sinsabaugh and David Munley, who had participated in the interrogations of the Tucson Four.

After being transported to the Task Force headquarters, Detective Riley gave Doody oral Miranda warnings, the adequacy of which are in dispute. The warnings were preceded by what might by deemed casual conversation but which was obviously meant to distract Doody, and to lull him into a sense of security and calm. The warnings themselves were buried in 15 minutes worth of distracting patter, and, although Detective Riley told the Petitioner that he would be reading the rights "verbatim" from the juvenile Miranda waiver form which Doody was asked to -- and did -- initial, Riley's advice deviated substantially from the words on the form.[3] From the tape recording, and the absence of significant pauses, it is clear that Petitioner relied

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presented at sentencing, shows that Johnathan lacks an ability to communicate in the English language with any degree of sophistication. In tenth grade, he was placed in an English as a second language program at school. He read, at best, at a fourth-grade (nine year old).

[3] The transcript of the giving of the warnings (which was tape-recorded) is reproduced in the Appendix at App. 40-53. The tape recording is also available and will be provided to the Court if the Court wishes to review it.

on Riley's spoken words, and that Petitioner did not himself read the form;[4] no court has ever found or even suggested otherwise.

In advising the Petitioner, Detective Riley downplayed the importance of the Miranda warnings, telling Petitioner that this was something "to save time," "to get you back to do what you need to do," and to "get things squared away." (App. 40-41) Riley told Petitioner, more than once, not to "take it out of context," (App. 41, 47), which, in this context could only mean not to take what he was being told too seriously. When Petitioner said that he had never heard of the Miranda warnings, he was told that "they call it Rights on t.v., okay," but that it was not like anything he might have seen on television. Petitioner was told: "[I]t's a little more, little less ah technical and a little less heavy ... all it is, is its something that's ah for your benefit, as well for ours." (App. 42)

"Explaining" the right to counsel, Riley advised the Petitioner:

> [A]n attorney is a lawyer who will speak for you and help you concerning the crime or any kind of offense that ah we might think that you or somebody else is involved in, if you were involved in it, okay. Again, it [sic] not necessarily means that you are involved, but if you were, then

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[4] Information presented in connection with sentencing revealed that Petitioner, at best, read at a fourth grade level. See n.2, supra.

that's what that would apply to okay. (App. 49) (emphasis added).[5]

Although Petitioner was told that he was free to ask questions if there was anything he did not understand, when he did ask a question after this "explanation" -- saying "oh yeah what's this for?" -- Riley moved on and Petitioner's question went unanswered. See App. 49.

Doody was interrogated for over 12-1/2 hours straight.[6] In the course of the interrogation, the officers made numerous statements that contradicted the Miranda warnings. They (falsely) told Petitioner that what he said would stay in that room.[7]

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[5] The form reads: "An attorney is a lawyer who will speak for you and helps you concerning the crime which we think you have done."

[6] The tape recording of the interrogation reveals ceaseless, almost hypnotizing exhortations and pleas; appeals to Doody's honor, duty and manhood; promises of protection for him and his loved ones; false promises that what he said would not be communicated to others; and relentless insistence that he needed to tell what he knew, with the clear message that the interrogation would not end until he did.

[7] "What you tell us right now is gonna stay right here. (Transcript of Interrogation, Tape 3, page 27); "Jonathan, we're not even gonna go out and be telling every what you're saying that's not the way we do business." (Id., Tape 9, page 9); "This is what you gotta trust me

They told him, repeatedly, that he had to talk.[8] Though what he was saying is not altogether clear, after more than six hours of questioning, Petitioner admitted that he had gone to the Temple, with Garcia, Caratachea and others, for what he thought was a game to see whether the Temple's security system could be breached, and he indicated that he was outside the Temple when the shooting occurred.

Garcia made a deal, pleading guilty to the murder of the nine Temple victims and to a subsequent unrelated cold-blooded murder.[9] In exchange for his testimony

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on, again, okay ... We're not going and telling people who you told us." (Id., Tape 11, page 13); "We're in a room, you're not in a, a court, you need to come clean with us on this." (Id., Tape 12, page 17); "We're gonna protect this, this stuff." (Id., Tape 15, Page 27).

[8] "you just have to open up" (Transcript of Interrogation, Tape 3, page 27); "have to help us" (Id., Tape 6, page 15); "have to tell us" (Id., Tape 3, page 27); "have to get rid of it" (Id., Tape 7, page 11); "have to do it" (Id.); "I'm gonna stay here until I get an answer" (Id., Tape 9, page 3); "We're gonna sit here and have to go through this thing ... your not telling the truth ..." (Id., Tape 11, page 11).

[9] Garcia had murdered a lone defenseless woman, Alice Cameron, at a campground, in the relatively brief period after the Temple homicides but prior to his arrest. Notably, in committing that murder, Garcia himself used the phrase "no witnesses" -- words he claimed Doody

against Doody, Garcia got a guarantee that he would not receive the death penalty for the Temple killings or his subsequent murder.

Prior to Petitioner's trial, Petitioner moved for suppression of his recorded statement, raising both state and federal constitutional grounds. A voluntariness hearing was held, at which the officers who conducted the interrogation testified. Following this hearing, at which the tapes of the interrogation were admitted into evidence, the trial court ruled that Doody's confession was admissible. The trial court held that Doody was not entitled to Miranda warnings because he was not in custody when he was transported to the Task Force offices for questioning, but that in any event he was advised of his rights in language that "could, and, in fact, was clearly understood." The trial court also ruled that Doody's statements were voluntary, though it held that the voluntariness question was "a close one".

At trial, the jury heard the tapes of Doody's interrogation, as well as testimony from the officers who had participated in it. The jury also heard Alex Garcia, who testified, in accordance with his plea agreement, that Doody had approached him, essentially out of the blue, with a plan to commit a robbery at the Temple, and that Petitioner had fired all of the fatal shots.

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uttered at the Temple -- to convince his 14 year old girlfriend that Cameron had to die.

In the defense case, the defense introduced evidence, inter alia, that impeached Garcia. He also introduced evidence to support the position that Caratachea and others were involved,[10] and that he had gone to the Temple with Garcia, Caratachea and others having been duped into believing they were going there to play a harmless war game.

The defendant also introduced evidence that the four men from Tucson had confessed, calling two of them to testify, [11] introducing the taped interrogation of a third, and the written statement of the fourth. The trial court ruled, however, that defense counsel could not argue that the confessions of the Tucson Four were false, nor use their confessions to argue

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[10] Petitioner was not, however, allowed to introduce a sworn statement given by James Herron, who failed to appear pursuant to a trial subpoena and a bench warrant. Herron had been in juvenile detention with Caratachea. Caratachea had confessed to Herron that he (Caratachea) was a participant in the Temple homicides, claimed that Garcia was the shooter, and revealed that Doody thought they were going to the Temple to play a war game. Herron did appear after the defense had rested, but the trial court refused to allow the defense to reopen and introduce Herron's testimony.

[11] Both men testified that they did not have anything to do with the Temple murders, but that they had previously told the authorities that they were involved.

that Petitioner's own confession was involuntary and unreliable.

The jury convicted the defendant, but rejected the State's theory (and Garcia's testimony) that this was intentional, premeditated murder on Doody's part; it based its verdict, instead, on the theory of felony-murder. The Petitioner was sentenced to nine consecutive life terms.

On appeal, Petitioner argued, inter alia, that the Miranda warnings he received were misleading and inadequate, that no knowing, intelligent, and voluntary waiver of his rights had occurred, and that his confession was involuntary and inadmissible.

Petitioner also argued on appeal that the trial court had violated his rights under Crane v. Kentucky, 476 U.S. 683 (1986), and under the due process clause by refusing to permit him to use the Tucson Four confessions to argue that his own confession was involuntary and unreliable.

The Arizona Court of Appeals affirmed the conviction.[12] It held that the trial court "did not err in determining that the officers advised Doody of his Miranda rights in a clear and understandable manner." (App. 17) The Court did not mention the specific defects in the warnings upon which the Petitioner urged error. Instead it said:

> The officers read each warning from a standard juvenile form and

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[12] It rejected the State's claim that the challenge to the Miranda warnings had been waived.

> provided additional explanations as appropriate. After reading each warning, the officer asked Doody if he understood the rights involved and obtained his initial on the form. Although Doody had no prior experience with the criminal justice system, the officers explained the rights in a manner appropriate for his age and apparent intelligence. (App. 17-18)

The Court of Appeals also rejected Doody's claim that he was improperly precluded from arguing, from the Tucson Four evidence, that his own confession was involuntary and unreliable. The Court of Appeals ruled that Crane v. Kentucky was inapplicable because Doody was not foreclosed from introducing evidence concerning the manner in which his own confession was obtained. (App. 21)

The Court further stated that claims based on the falsity of the Tucson Four confessions were waived. (App. 22) In support of its ruling, it stated that the defendant, in seeking to introduce such evidence, did not ask that it be admitted for the purpose of showing that those confessions were false. (Id.) It also stated that Doody failed, on appeal, to demonstrate sufficient similarities between his interrogation and the interrogation of the others to render "the truthfulness of one ... probative of the truthfulness of the other." (App. 22)

By order dated January 14, 1997, the Supreme Court of Arizona denied review. (App. 38)

REASONS WHY THE PETITION SHOULD BE GRANTED

I. THIS CASE RAISES SIGNIFICANT QUESTIONS ABOUT THE STANDARD TO BE USED IN ASSESSING THE ADEQUACY OF NON-STANDARD MIRANDA WARNINGS GIVEN TO JUVENILES AND ABOUT THE ADEQUACY OF WARNINGS THAT, INTER ALIA, DOWNPLAY THEIR IMPORTANCE

This case raises serious questions about the manner in which Miranda warnings must be administered, as well as the specific content of such warnings when the officer administering the warnings choose to ad lib and "elaborate", rather than sticking to the standard script. Because these issue arise in the context of the interrogation of a juvenile -- one whose first language was not English and who lacked any prior exposure to Miranda warnings or to the criminal justice system -- the case also presents the question whether, where juveniles are concerned, must courts use a higher standard in assessing the adequacy of Miranda warnings than might be the case where adults are involved. Given the increasingly multicultural nature of our society, and a distressing trend showing younger and younger persons becoming suspects in crimes of the utmost seriousness, these issues are plainly important ones.

This Court has twice addressed the adequacy of particular Miranda warnings. In California v. Prysock, 453 U.S. 355 (1981)(per curiam), a case involving a minor, the Court said that "no talismanic incantation is required to satisfy [Miranda's] strictures; what is required is the "familiar Miranda warnings ... or their equivalent." 453 U.S. at 360, quoting Rhode Island v. Innis, 446 U.S. 291, 297

(1980)(emphasis supplied by Prysock Court). In Duckworth v. Eagan, 492 U.S. 195 (1989), the Court reiterated that Miranda warnings need not be given in the exact form described in the Miranda decision. Justice Rehnquist wrote, "Reviewing courts ... need not examine Miranda warnings as if construing a will or defining the terms of an easement." The inquiry is simply whether the warnings reasonably "conve[y] to the suspect his rights." 492 U.S. at 203.

The passage of time has shown that the flexibility approved in Prysock and in Eagan is problematic. Even where adults are concerned, the flexible approach has its costs. As several scholars have suggested, it invites the police to play a game whose object is to see how far they may depart from the standard warning and still get away with it. See Y. Kamisar, W. LaFave, J. Israel, Modern Criminal Procedure 580 (1986).

Where juveniles are concerned, such a game is particularly distasteful. The research that exists suggests that, at best, most juveniles' comprehension of even model Miranda warnings is imperfect. See T. Grisso, Juveniles' Waiver of Rights: Legal and Psychological Competence 59-94 (1981); E. Maykut, "Who is Advising Our Children: Custodial Interrogation of Juveniles in Florida," 21 Fla. St. U.L. Rev. 1345 (1994); see also S. Greenburg, "Learning Disabled Juveniles and Miranda Rights -- What Constitutes Voluntary,

Knowing and Intelligent Waiver," 21 Golden Gate U.L. Rev. 487 (1991).[13]

Where the police are afforded flexibility, they are likely to use this freedom to the minor's detriment. When non-standard warnings are given, the risk always arises that the additional or alternative wording will misdefine or mislead concerning the right at issue. Where intentions are not so benign, the giving of additional explanations also

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[13] To be sure, in assessing whether a juvenile's waiver of Miranda rights was knowing and voluntary, this Court has held that the totality of the circumstances must be considered -- including the juvenile's age, experience, education, background, and intelligence. Fare v. Michael C., 442 U.S. 707 (1979). Michael C., however, was a case where the officer "fully advised the respondent of his Miranda rights." Id. at 710.

Miranda v. Arizona, 384 U.S. 436, 444 (1966), required that, before a custodial interrogation can take place, officers must administer warnings sufficient to inform the subject of his privilege against self-incrimination. Failure to give those warnings creates an "irrebuttable presumption" that the statement was obtained in violation of the defendant's right not to incriminate himself. Oregon v. Estad, 470 U.S. 298, 307 (1985). The giving of inadequate or defective warnings must give rise to the same irrebuttable presumption. Inquiry as to whether there was an intelligent and voluntary waiver of Miranda rights thus does not occur if adequate Miranda warnings were not given.

provides those administering the rights an opportunity to "soften" Miranda, and to bury its important message in a blizzard of irrelevant or confusing patter. In the guise of "simplifying" or "explaining" the warnings so that they may be better understood by youths, the police can effectively confound and confuse.

This Court's decisions, unfortunately, encourage this, and the Court should no longer tolerate it, at least where minors are concerned. Because of the special vulnerability of young people, the protections which Miranda was designed to afford -- including minimizing "the possibility of unreliable statements," Withrow v. Williams, 507 U.S. 680 (1993), are especially important. See In re Gault, 387 U.S. 1 (1967); Gallegos v. Colorado, 370 U.S. 49, 54-55 (1962); Haley v. Ohio, 332 U.S. 596, 599-600 (1948). That Miranda rights be plainly and unambiguously stated at the outset is crucial, particularly where, as here, in the course of the interrogation, the officers contradicted the Miranda warnings and told the youth that his words would not leave the room (and thus would not be used against him) and that he had to tell what he knew, with the clear message that the interrogation would continue until he did (contradicting earlier advice as to his right to remain silent). See nn. 7-8, supra.

In this case, on the appeal, the State did not even try to defend the warnings that were given, or the manner in which they were given. It relied instead on a frivolous claim that defendant had waived the issue, an argument that the Court of Appeals, quite properly, rejected.

On the merits, however, though the State has never claimed that the warnings that were given were valid, the Court of Appeals rejected Doody's claims, concluding that the officers advised Doody of his Miranda rights "in a clear and understandable way." (App. 17) The decision, however, is utterly silent with regard to the specific defects that Doody identified, including his claim that he was told that the warnings were of little importance and his contention that he was seriously misadvised about the right to counsel since he was told, essentially, that his right to counsel would apply only if he was involved in a crime, or if he was willing to admit that he was.

Review should be granted so the Court can consider whether a flexible approach, or a more rigorous one, should be used in assessing the adequacy of Miranda warnings given to a juvenile who is being subjected to custodial interrogation, and whether, under either a flexible or a more rigorous approach, the warnings given to the Petitioner pass muster and satisfy Miranda's mandate.

II. THE COURT SHOULD DECIDE WHETHER PETITIONER'S RIGHTS UNDER CRANE V. KENTUCKY AND THE DUE PROCESS CLAUSE WERE VIOLATED WHEN THE TRIAL COURT RULED THAT HE COULD NOT ARGUE TO THE JURY, USING THE TUCSON FOUR CONFESSIONS, THAT HIS OWN CONFESSION, LIKE THEIRS, WAS INVOLUNTARY AND FALSE

This case raises an important question involving the reach of this Court's decision in Crane v. Kentucky, 476 U.S. 683 (1986), and the scope of the right to present a defense, a right that is

protected by the Due Process Clause. More specifically, the question is whether the Petitioner's rights were violated when the court allowed him to present evidence that the Tucson Four had confessed to the Temple murders and been charged with those crimes, but ruled that his attorney could not argue to the jury that the Tucson Four confessions, which the State maintained were coerced and false, cast doubt on the voluntariness and reliability of Petitioner's confession. In the context of this case, that ruling deprived the Petitioner of the right fully to present his defense to the jury, and it deprived him of a fair trial. See Washington v. Texas, 388 U.S. 14, 22 (1967); Chambers v. Mississippi, 410 U.S. 284, 294 (1973); Crane v. Kentucky, 476 U.S. 683, 650 (1986).

This Court has recognized the importance of closing arguments in criminal cases, holding that, even in a bench trial, the Sixth Amendment right to counsel guarantees the defendant the right to have closing argument. Herring v. New York, 422 U.S. 853 (1975).

> It can hardly be questioned that closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. For it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries' positions. And for the defense, closing argument is

> the last clear chance to persuade the trier of fact that there may be reasonable doubt of the defendant's guilt.

Id. at 862. While the Court at the same time recognized that the presiding judge "may ensure that argument does not stray unduly from the mark, or otherwise impede the fair and orderly conduct of the trial," id., the law also recognizes that, in closing arguments, all reasonable inferences from the evidence may be argued. See Jacob A. Stein, Closing Argument: The Art and the Law § 12 (1996); ABA Standards for Criminal Justice: The Defense Function (Approved Draft, 1971) § 7.8(a). After all, the purpose of summing up is to assist the factfinders in analyzing, evaluating, and applying the evidence.

To be sure, in this case, Petitioner was allowed to present closing argument, but he was not allowed to make a critical argument to the jury: that the Tucson Four confessions -- which the State maintained were false and/or involuntary -- shed light on the voluntariness and reliability of his own confession. Such an argument should have been allowed, for it was logically, factually, and legally sound. The prosecutor himself, in his opening argument, had asked the rhetorical question why the Tucson suspects had admitted involvement in the Temple murders and he provided the following answer:

> We may never know, folks. Perhaps it was their fear. Perhaps it was ignorance on their part. Perhaps it was lack of sleep or exhaustion or coercion, or desire to please their interviewers.

Nevertheless, when Doody sought to use the Tucson Four confessions to argue that his confession was unreliable and involuntary, too, the trial court said no; the evidence was "irrelevant" for that purpose. In the context of this case, that ruling was surely wrong.

This case was rife with false confessions. Yet the State's case against Doody rested in large measure upon admissions made by Doody in the course of an extended interrogation. The voluntariness and reliability of his statements were subject to substantial doubt.[14] The trial court called the voluntariness question a close one, and indicated that the Court of Appeals would be looking at the issue closely. Instead, the Court of Appeals deferred to the trial court's exercise of discretion, and indicated further that the trial court's decision to admit the confession did not constitute a final determination of voluntariness, since the jury was instructed to consider the confession only if it found it to be voluntary. (App. 15)

The defendant was entitled to have the jury consider all relevant evidence in determining whether Doody's confession was

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[14] When the interrogation occurred, the Task Force officers were hellbent on establishing a link between the murder weapon and the Tucson suspects, and succeeded in getting Doody to implicate the men from Tucson. The State, which ultimately decided to proceed on the theory that Doody and Garcia acted alone, would have to concede that Doody's statements were coerced to the extent that they implicated the Tucson suspects.

voluntary and reliable, and was entitled to have his attorney, in oral argument, marshal all arguments which could raise a reasonable doubt about the Petitioner's guilt.

In Crane v. Kentucky, 476 U.S. 683 (1986), Justice O'Connor, writing for a unanimous Court, held that a defendant has a fundamental constitutional right to present evidence casting doubt on the credibility of a confession, and to argue to the jury that he is innocent notwithstanding his admission of guilt. While Crane involved the exclusion of evidence, and not a restriction on argument to the jury, Crane recognized that "a defendant's case may stand of fall on his ability to convince the jury that the manner in which the confession was obtained casts doubt on its credibility." 476 U.S. at 689. Yet the trial court's ruling seriously impeded the defendant's ability to cast doubt on the credibility of his confession because it prevented him from making the most powerful argument in support of that thesis: that the Task Force had obtained confessions to the same crimes from other older, presumably more sophisticated persons.

The Court of Appeals ruled, Petitioner believes incorrectly, that Crane is inapplicable, because Doody was not foreclosed from making arguments about the nature of his own interrogation. Assuming arguendo that Crane itself is not controlling, its reasoning surely compels recognition of Petitioner's due process right to argue that the Tucson Four confessions were false and that his was too. The Court of Appeals avoided this important constitutional issue by making a patently baseless waiver ruling, though the

State had never even suggested that the issue was not properly presented or preserved for review.[15]

In light of the plethora of confessions to the Temple killings that the Task Force was able to obtain, and the substantial questions surrounding the voluntariness and veracity of Petitioner's own confession, whether he should have been permitted to cast doubt on the veracity and voluntariness of his own confession by showing that the Task Force had obtained admittedly false confessions by others to the very same crimes, raises a substantial

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[15] On appeal, while the State did argue that several of the issues presented had been waived, it made no waiver claim with respect to this issue. Indeed it acknowledged that "Appellant wanted to argue that, because the Tucson confessions were not true, his confession was not true either." The State's argument in the Court of Appeals, like its argument at trial, was that the falsity of the Tucson Four confessions was not relevant to the truth or falsity of defendant's confession.

With respect to the Petitioner's claimed failure to demonstrate sufficient similarities between his interrogation and the interrogations of the Tucson Four, although the interrogations were, of course, not identical, on appeal, Petitioner had argued, and the record showed, that the Task Force officers who interrogated Petitioner had participated in the interrogations of one or more of the Tucson Four. There is no question but that the crimes to which the Tucson Four confessed were the crimes for which Petitioner was on trial.

constitutional issue that this Court should consider.

CONCLUSION

For the reasons stated, the Petitioner respectfully prays that the petition for a writ of certiorari be granted.

Respectfully submitted,

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Dated: New York, New York
April 10, 1997

A P P E N D I X

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee, v. JOHNATHAN ANDREW DOODY, Appellant.	)	1 CA-CR 94-0120 DEPARTMENT A O P I N I O N

Appeal from the Superior Court
of Maricopa County

Cause No. CR 92-01232

The Honorable Gregory H. Martin, Judge

AFFIRMED

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M c G R E G O R, Judge.

Johnathan Andrew Doody appeals his convictions and sentences for nine counts of first degree murder, nine counts of armed robbery, one count of burglary, and one count of conspiracy to commit armed robbery. For the reasons stated below, we affirm Doody's convictions and sentences.

I.

On the morning of August 10, 1991, members of the Wat Promkunaram Buddhist Temple discovered nine bodies inside the temple (the temple murders). The victims, including six Buddhist monks, lay face down in a circle, each shot in the head. Several of the victims had sustained additional, non-fatal shotgun wounds. Living quarters inside the temple had been ransacked, and items of personal property, including money, cameras, and stereo equipment, were missing. Police analysis of the bullets identified the murder weapon as a Marlin Model 60 .22 caliber rifle (Marlin rifle).

In September 1991, detectives received an anonymous tip implicating four men from Tucson (the Tucson Four) in the temple murders. During questioning, the suspects made inculpatory statements, based on which the state charged the Tucson Four with the temple murders.

In an attempt to locate the murder weapon, investigators issued an advisory directing all law enforcement agencies to report any Marlin rifles. Investigators subsequently received a report from Luke Air Force Base that a military officer had discovered a Marlin rifle during a search of a vehicle stopped in an unrelated

incident. Investigators recovered the rifle from its owner, Rolando Caratachea, and later identified it as the temple murder weapon. Caratachea denied involvement in the temple murders and claimed that two minors, Doody and another friend, Alessandro Garcia, had borrowed the rifle shortly before the murders.

Officers located Doody on October 25, 1991, at a high school football game. Doody agreed to accompany the officers to the police station for questioning. After arriving at the station, the officers advised Doody of his Miranda[1] rights. Doody indicated that he understood his rights and was willing to speak to the investigators without an attorney or his parents present.

Doody's interrogation began at 9:25 in the evening. Doody initially denied any knowledge of the events at the temple but, after two and one-half hours, made inculpatory statements and, after approximately four more hours of questioning, admitted to being at the temple on the night of the murders. Doody claimed that Caratachea and Garcia approached him with a plan to conduct a "war game," which entailed surrounding the temple without setting off the security system. Doody stated that he went to the temple with Caratachea, Garcia, and two others, George Gonzalez and his friend. Doody maintained that he had not intended to enter the temple but that, once past the security sensors, he followed the others inside. Doody stated that Caratachea, Garcia, Gonzalez, and the other participant

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[1] Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

ransacked the temple's living quarters and gathered the victims into the main room. Doody stated that one of the monks recognized Gonzalez, who then ordered Doody to go outside and confirm that the walls were sound-proof. Doody maintained that the shootings occurred while he was outside and that he did not know who fired the shots. Officers did not complete the interview until after 10:00 the next morning.

Officers also questioned Garcia on the night of October 25, 1991. Garcia initially invoked his right to remain silent but, after consulting his father, agreed to give a statement regarding his involvement in the temple murders. Garcia claimed that Doody conceived the plan to rob the temple and persuaded Garcia to join him. Garcia stated that, once inside the temple, Doody insisted they leave "no witnesses" and that, despite Garcia's attempts to dissuade him, Doody shot each of the victims in the head with a rifle he had borrowed from Caratachea. Garcia claimed that he panicked and fired his shotgun in the direction of the victims. Garcia maintained that only he and Doody participated in the robbery and murders.

Investigators searched Garcia's home and discovered several items taken from the temple. Investigators also found a shotgun, later determined to be the gun that fired the shotgun shells recovered at the crime scene. Based on the confessions and the evidence collected at Garcia's home, the state dismissed the charges against the Tucson Four and charged Doody and Garcia with the temple murders. Following a juvenile transfer hearing at which Caratachea testified that Doody and Garcia had borrowed his rifle shortly

before the murders, the court ordered Doody and Garcia to stand trial as adults.

Early in the pretrial proceedings, Doody and Garcia moved to suppress their confessions. After a ten-day suppression hearing, the trial court denied both motions. Garcia thereafter entered a plea agreement, pursuant to which the state agreed not to pursue the death penalty and Garcia agreed to testify against Doody. In addition, Garcia pled guilty to nine counts of first degree murder and one count of burglary in connection with the temple murders, as well as one count of first degree murder in an unrelated homicide (the Cameron murder).

The state proceeded to trial against Doody. At trial, Garcia testified consistently with his interrogation statements. The trial court did not allow Doody to cross-examine Garcia regarding the Cameron murder or other unrelated and uncharged offenses that Garcia had committed with Caratachea, including a series of burglaries and conspiracy to commit murder and armed robbery (the Cruz offenses). After Caratachea invoked his fifth amendment right not to testify at Doody's trial, the trial court allowed Doody to read into evidence Caratachea's testimony from the juvenile transfer hearing, except those portions of the transcripts referring to Caratachea's prior crimes.

The jury ultimately convicted Doody on each count. With respect to the first degree murder charges, the verdicts revealed that the jury premised Doody's convictions on felony murder rather than premeditated murder. The trial court subsequently sentenced Doody to nine

consecutive life terms on the murder counts and eleven additional prison terms on the remaining counts.[2] Doody now appeals. We have jurisdiction pursuant to Arizona Revised Statutes Annotated (A.R.S.) section 12-120.21.

II.

Doody asserts that the trial court erred by failing to suppress his confession. Prior to trial, the trial court conducted an evidentiary hearing to determine the admissibility of Doody's statements. The suppression hearing lasted ten days, with testimony on each day. Based on the evidence presented at the hearing, including testimony from the officers who questioned Doody and the audio tapes of Doody's interrogation, the trial court concluded that Doody confessed voluntarily and waived his constitutional rights knowingly and intelligently. We will not disturb the trial court's determination absent clear and manifest error. State v. Lucas, 146 Ariz. 597, 607, 708 P.2d 81, 91 (1985).[3]

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[2] Following a mitigation hearing, the trial court rejected the death penalty based on Doody's age, lack of prior criminal record, and the fact that, under the terms of his plea agreement, Garcia would not receive the death penalty despite the possibility that Garcia, rather than Doody, fired the fatal shots.

[3] Doody urges this court to adopt a de novo standard of review, arguing that the audio tapes of Doody's complete interrogation provide us the same ability as the trial court possessed to evaluate the voluntariness of his confession.

A.

Doody argues that the trial court should have suppressed his statements because the officers coerced him to confess. In Arizona, confessions are presumed to be involuntary, and the state must establish by a preponderance of the evidence that a defendant confessed voluntarily and freely. State v. LaGrand, 153 Ariz. 21, 26, 734 P.2d 563, 568, cert. denied, 484 U.S. 872, 108 S.Ct. 207, 98 L.Ed.2d 158 (1987). In assessing the voluntariness of a confession, we "look to the totality of the circumstances surrounding the confession and determine whether the will of the defendant has been overborne." State v. Lopez, 174 Ariz. 131, 137, 847 P.2d 1078, 1084 (1992), cert. denied, 510 U.S. 894, 114 S.Ct. 258, 126 L.Ed.2d 210 (1993). With respect to juvenile confessions,

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Determining the voluntariness of a confession is by nature an intensely factual inquiry, and we rely on the trial court's assessment not only of tangible evidence reproducible on appeal, but intangible evidence, including the credibility of witness testimony. See State v. Chapple, 135 Ariz. 281, 297 n. 18, 660 P.2d 1208, 1224 n. 18 (1983). Here, the officers who questioned Doody testified at the suppression hearing that Doody understood the Miranda warnings and that he remained alert and responsive throughout the extended interrogation. Only the trial judge could evaluate the impact and credibility of the officers' testimony, and we will not substitute our judgment for that of the trial court absent clear error.

> the "greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair." Thus, we evaluate whether police conduct was coercive in the context of a juvenile confession by carefully scrutinizing not only the external circumstances under which the juvenile was questioned but also the juvenile's reasonably apparent cognitive abilities. We also consider other inherently coercive factors in the totality: the arguably coercive atmosphere of the police interrogation room; the focus of the investigation on defendant as the prime suspect; and police transportation to the station.

State v. Jimenez, 165 Ariz. 444, 449, 799 P.2d 785, 790 (1990) (citations omitted).

The trial court considered the factors set forth in Jimenez. At the time of questioning, Doody was seventeen and one-half years old and completing his junior year in high school. Doody told the officers that he maintained a B grade average. Doody participated in his high school honor guard and color guard and held a job at the Luke Air Force Base commissary. Doody spoke fluent, although lightly accented, English. Doody gave no

indication of any mental disorder.[4] The trial court also considered the external circumstances of the interrogation, specifically the time and duration of the interrogation, and concluded that, in light of the officers' testimony regarding Doody's demeanor and the court's own review of the audio tapes, the circumstances surrounding the interrogation did not warrant suppression.

Doody argues that the length of the interrogation, which began in the evening and continued for almost thirteen hours without significant breaks, indicates that he did not confess voluntarily. We consider the length of an interrogation in determining voluntariness particularly when, as is true here, the interview continues for a long period of time. However, the troublesome length of Doody's questioning does not, in itself, establish that the officers overcame Doody's will to resist confessing. See State v. Taylor, 112 Ariz. 68, 81, 537 P.2d 938, 951 (1975), cert. denied, 424 U.S. 921, 96 S.Ct. 1127, 47 L.Ed.2d 328 (1976) (characterizing seven-hour interrogation as "long" but upholding the statements as voluntary in the absence of evidence that a lack of food and sleep contributed to the statements). Other factors indicate that, despite the length of the interrogation, Doody

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[4] On appeal, Doody points to evidence presented at the sentencing proceedings concerning his background and communication skills. We limit our review of the admissibility of Doody's confession to the evidence before the trial court at the suppression hearing. State v. Flower, 161 Ariz. 283, 286 n. 1, 778 P.2d 1179, 1182 n. 1 (1989).

confessed voluntarily. Although the entire interrogation lasted approximately thirteen hours, Doody admitted he had borrowed Caratachea's rifle at the time of the temple murders after approximately two and one-half hours of questioning. Doody admitted he had participated in the temple robbery after approximately six and one-half hours of questioning, and his description of the events at the temple spanned nearly two hours. During the remaining hours, the detectives reviewed Doody's testimony and probed for a connection to the Tucson Four.

Although Doody characterizes the tone of the interrogation as coercive, the audio tapes reveal a courteous, almost pleading style of questioning during most of the interview. Each of the officers involved in the interrogation testified at the suppression hearing that Doody remained alert and responsive throughout the interrogation and did not appear overtired or distraught. Our review of the audio tapes confirms the officers' testimony. Because Doody exercised his right not to testify at the suppression hearing, neither the trial judge nor this court has any basis for assuming that he would have contradicted the officers' testimony. The record, both at the time of the suppression hearing and after trial, includes no evidence that calls into question the testimony that Doody remained alert and responsive. Moreover, both before and during the interrogation, the officers offered Doody food and drinks and accommodated his requests to use the restroom. For those reasons, we conclude that the length of Doody's interrogation, in itself, does not mandate a finding of involuntariness.

Doody argues further that the trial court should have suppressed his statements because he did not have a parent or guardian present at the interrogation. We consider whether a parent is present during the questioning of a juvenile in evaluating voluntariness, but a parent's absence does not, in itself, render a confession involuntary. State v. Hardy, 107 Ariz. 583, 584, 491 P.2d 17, 18 (1971). Moreover, the absence of a parent weighs less heavily when, as here, the juvenile has not requested a parent or other adult. Jimenez, 165 Ariz. at 452, 799 P.2d at 793. At the outset of the interrogation, detectives asked Doody whether he wanted to have his parents present during questioning. Doody responded that he did not care whether his parents were present and thereafter agreed to speak with the detectives alone.[5] In light of Doody's age and his specific consent to speak with the officers without his parents, we reject Doody's argument that the absence of a parent renders his confession inadmissible.

Bearing in mind Doody's individual characteristics and the external circumstances of the interrogation, we turn

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[5] Doody argues on appeal that the officers took extraordinary steps to ensure that his father would not be available during the interrogation. At the outset of the interrogation, Doody specifically declined to have his parents present and did not request that they be contacted at any point during the questioning. Thus, whether the state acted to prevent Doody's father from attending the interrogation could not have affected the voluntariness of Doody's statements.

to the conduct of the police in obtaining Doody's confession. To be voluntary, a confession must not be induced by threats or promises of benefit or leniency, no matter how slight. State v. Williams, 136 Ariz. 52, 56, 664 P.2d 202, 206 (1983). Doody argues that the officers elicited his confession improperly by promising not to divulge his statements to the other suspects. We disagree. "Before a statement will be considered involuntary because of a 'promise,' evidence must be established that (1) a promise of benefit or leniency was in fact made, and (2) the suspect relied on that promise in making the statement." Lopez, 174 Ariz. at 138, 847 P.2d at 1085 (citing State v. Amaya-Ruiz, 166 Ariz. 152, 165, 800 P.2d 1260, 1273 (1990), cert. denied, 500 U.S. 929, 111 S.Ct. 2044, 114 L.Ed.2d 129 (1991)).

Applying the test set forth in Lopez and Amaya-Ruiz, we reject Doody's argument for two reasons. First, the detectives' statements did not constitute a "promise" because they "did not offer any benefit to the defendant in exchange for information." State v. Hensley, 137 Ariz. 80, 87, 669 P.2d 58, 65 (1983) (statement by officer that suspect's confession would not be admissible in court did not constitute a promise); see Lopez, 174 Ariz. at 138, 847 P.2d at 1085 (statement by officer that he would not play interrogation tapes for victim's mother did not constitute a promise). The trial court found, and we agree, that the officers assured Doody that his statements would not be disclosed to the other suspects because the officers believed Doody's fear of reprisal affected his willingness to talk. The detectives did not imply that the state would not prosecute Doody if he revealed the

information or that the state would not use his statements against him in a subsequent prosecution. See State v. Burr, 126 Ariz. 338, 340, 615 P.2d 635, 637 (1980). Second, Doody fails to establish that he relied on the statements in confessing. See Amaya-Ruiz, 166 Ariz. at 165, 800 P.2d at 1273; see also Utah v. Strain, 779 P.2d 221, 227 (Utah 1989) (recognizing that, under totality of circumstances test, a threat or promise does not render confession inadmissible absent reliance). For those reasons, we conclude that the trial court did not err in determining that "the statements by law enforcement that what defendant Doody said would not be told to others ... were not sufficiently compelling to overcome defendant Doody's will to resist confessing."

We also reject Doody's argument that the officers unfairly pressured him to confess. The officers used a variety of approaches in questioning Doody. They emphasized Doody's experience in the high school honor guard and color guard and appealed to his sense of honor as a soldier. At impasses in the interview, the police captain entered the interrogation room and likened himself to a commanding officer in the military, encouraging Doody to trust and confide in him. The officers feigned empathy with Doody's situation and pleaded with Doody to prove his innocence. The officers also indicated to Doody that other suspects had implicated him in the temple murders and that Doody's best defense would be to explain his version of the events.

In State v. Carrillo, 156 Ariz. 125, 750 P.2d 883 (1988), the court addressed the propriety of deceptive interrogation tactics:

> The very nature of law enforcement encourages police to use some artifice and trickery in their work. Miranda curtailed many of the most egregious practices, such as the infamous "third degree." However, courts still tolerate some police gamesmanship, so long as the games do not overcome a suspect's will and induce a confession not truly voluntary.

Id. at 136, 750 P.2d at 894 (emphasis added) (citations omitted). The trial court correctly characterized portions of Doody's interrogation as "aggressive, energetic [and] forceful" but concluded that "the method and style used by law enforcement in questioning defendant Doody was permissible, i.e., lawful...." We agree. The officers conducting Doody's interrogation made no improper promises or threats and, although Doody did not speak for long periods during the interrogation, he never invoked his right to remain silent or his right to an attorney. The tactics, though deceptive in part, were not so egregious as to overcome Doody's will and, as discussed above, the record contradicts Doody's claim on appeal that the method of interrogation induced him to confess. With respect to the officers' statements that Doody's best defense would be to explain his involvement in the temple murders before the other suspects placed primary blame on him, we note that "[a]dvice to tell the truth, unaccompanied by either a threat or promise, does not make a confession involuntary." State v. Ross, 180 Ariz. 598, 603, 886 P.2d 1354, 1359 (1994), cert. denied, --- U.S. ----, 116 S.Ct. 210, 133 L.Ed.2d 142 (1995).

For these reasons, we conclude that the trial court did not abuse its discretion by admitting Doody's confession. Moreover, the trial court's decision to admit the confession did not constitute the final determination of voluntariness. In this case, as in all others, the jury was "the ultimate arbiter of voluntariness, and [was] free, in effect, [to] disagree with the judge, and reject the confession." State v. Gretzler, 126 Ariz. 60, 84, 612 P.2d 1023, 1047 (1980) (quotation omitted). The trial judge instructed the jury that Doody's statement was not voluntary if it resulted from his "will being overcome by a law enforcement officer's use of any sort of violence, coercion, or threats, or by any direct or implied promise, however slight." The judge told the jury to give Doody's statement whatever weight it deserved under all the circumstances. Following those instructions, the jury either found the confession voluntary and gave it appropriate weight or convicted Doody on the basis of other evidence.

B.

Doody also argues that the trial court should have suppressed his confession because the officers did not inform him sufficiently of his rights before questioning him. To be admissible, "a confession must not only be free from coercion, but the defendant's waiver of his constitutional rights must be knowing and intelligent." Jimenez, 165 Ariz. at 449, 799 P.2d at 790. The Arizona Rules of Procedure for the Juvenile Court govern the admissibility of juvenile confessions, including statements made by a juvenile later charged as an adult:

> No extra-judicial statement to a peace officer by the child shall be admitted into evidence in juvenile court over objection unless the person offering the statement demonstrates to the satisfaction of the court that: The statement was voluntary and before making the statement the child was informed and intelligently comprehended that he need not make a statement, that any statement made might be used in a court proceeding, and that he had a right to consult with counsel prior to making a statement and during the taking of the statement, and that, if he or his parents, guardian or custodian could not afford an attorney, the court would appoint one for him prior to any questioning.

Ariz. R. Juv. Ct. P. 18; see Jimenez, 165 Ariz. at 450, 799 P.2d at 791. We determine whether extra-judicial statements resulted from a knowing and intelligent waiver of rights by considering whether, in light of the totality of circumstances, the officers "imparted a clear, understandable warning of all defendant's rights ... in language the defendant could comprehend and on which he could intelligently act." State v. Mumbaugh, 107 Ariz. 589, 597, 491 P.2d 443, 451 (1971).

The state initially argues that Doody waived his claim of error with respect to the adequacy of the Miranda warnings because he did not challenge the trial court's finding that he was not in custody. See id. at 593, 491 P.2d at 447 (explaining that, although warnings must precede

custodial interrogations, no warnings are necessary for non-custodial questioning because "[w]here [a] defendant is not in custody or deprived of his freedom his answers are not deemed compelled....").

The state's waiver argument relies on an overbroad reading of the trial court's findings. The trial court's factual findings resolved only the limited issue that Doody "was not under arrest or in custody when he was transported to the task force offices for questioning on October 25, 1991." Contrary to the state's assertion, the trial court did not address whether Doody was in custody during the interrogation. Doody's failure to challenge the trial court's narrow finding that he was not in custody prior to the interview does not constitute a waiver of his argument that the officers failed to advise him sufficiently of his rights before obtaining his inculpatory statements. For purposes of review, we accept Doody's characterization of the questioning as a custodial interrogation requiring Miranda warnings.

Again considering the circumstances in their totality, we conclude that the trial court did not err in determining that the officers advised Doody of his Miranda rights in a clear and understandable manner and that Doody made a knowing and intelligent waiver. At the outset of the interrogation, the officers advised Doody of his rights under Miranda and of his right to have a parent or guardian present during questioning. The officers also advised Doody of the possibility he later could be transferred to adult court. The officers read each warning from a standard juvenile form and provided additional explanations as appropriate. After reading

each warning, the officers asked Doody if he understood the right involved and obtained his initials on the form. Although Doody had no prior experience with the criminal justice system, the officers explained the rights in a manner appropriate for his age and apparent intelligence.

The officers testified at the suppression hearing that Doody appeared to understand the warnings and exhibited no signs of doubt or confusion. Based on that testimony and the court's review of the taped interrogation, the trial court concluded that the officers adequately advised Doody of his rights and obtained an appropriate waiver before continuing. In so holding, the trial court expressly considered Doody's age, intelligence, and lack of prior exposure to the criminal justice system. Our review of the record, including the audio tape of the warnings, supports the trial court's finding that Doody knowingly and intelligently waived his rights, and therefore we will not disturb the court's ruling.

III.

Doody next challenges the trial court's evidentiary rulings pertaining to testimony from the Tucson Four. Doody argues that the trial court erred by permitting him to present the confessions of the Tucson Four only to establish and argue the truth of their confessions. Had he not been so limited, Doody asserts, he could have presented evidence of improprieties in the Tucson Four interrogations and could have proved and argued that his own confession, which he attributes to "the same police officers using many of the same interrogation

techniques," was false, as were the Tucson Four confessions. Doody's argument on appeal that testimony from and confessions by the Tucson Four were admissible to show his confession was involuntary, however, is not only different from but also inconsistent with the basis on which Doody urged their admissibility in the trial court. Because a party may not assert an evidentiary theory for the first time on appeal, State v. Serna, 163 Ariz. 260, 267, 787 P.2d 1056, 1063 (1990), we reject this argument.

The question whether Doody could use the Tucson Four confessions first arose in the context of a motion in limine through which the state sought to preclude the defense from using statements by the Tucson Four. The state, not Doody, argued the Tucson Four statements should be excluded as unreliable and irrelevant. In response, Doody asserted the statements were relevant to his defense that the Tucson Four, not Doody, committed the temple murders and that a reasonable person could believe their confessions to be true. Doody gave no indication whatever that he intended to use the statements to establish that, because the Tucson Four confessions were not reliable, Doody's admissions also were not reliable. Moreover, as is self-evident, such an argument would have been inconsistent with the basis on which Doody had argued the trial court should admit the statements.

After hearing argument, the trial court agreed with Doody. The court first found the statements clearly relevant to whether the Tucson Four or Doody committed the temple murders and then weighed the probative value against the prejudicial effect of the statements. Commenting that

the jury would determine the credibility and voluntariness of the Tucson Four statements, the court determined that the statements would be admissible if the declarants were unavailable at trial.

Two of the Tucson Four, Mark Nunez and Leo Bruce, testified for Doody. Defense counsel questioned Nunez about the circumstances of his arrest and interrogation. During argument in chambers, Doody justified his examination into these areas by stating that he had two reasons for presenting the information. First, he wanted the jury to understand that the defense was presenting the full story, which he thought would add to the credibility of the defense. Second, since the prosecution intended to argue that the statements were unreliable, Doody wanted to "draw the sting." As had been true during earlier proceedings, Doody did not assert any intention of drawing parallels between the Tucson Four and the Doody interrogations.

Both Doody and the prosecution then questioned Nunez and Bruce extensively about the circumstances surrounding their interrogations and the content of their confessions. After the court found that Michael McGraw and Dante Parker, the remaining members of the Tucson Four, were unavailable as witnesses, the jury heard the audio recording of Parker's questioning and the court admitted into evidence McGraw's statement.

During a conference among the trial judge and lawyers, held outside the presence of the jury several days after the Tucson Four testimony ended, Doody asserted that, if the prosecution intended to suggest that Doody's confession was

reliable because the officers had discontinued the abusive practices used in the Tucson Four interrogations, the trial court should allow Doody to present evidence of "continuing abuses and similarities" in his own interrogation. At that point, the trial court commented that what occurred in the Tucson Four case was not relevant to the validity of Doody's statements. The court emphasized, as it had on several other occasions, that Doody could present to the jury any evidence related to his confession that would render it unreliable, including all the circumstances surrounding his confession.

Doody now asserts that the trial court, by foreclosing an argument that his confession, like those of the Tucson Four, was false, violated the principles set forth in Crane v. Kentucky, 476 U.S. 683, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986). We reject Doody's argument for several reasons. First, Crane does not apply. There, the Court held that a trial court may not exclude evidence concerning the manner in which the police obtain a defendant's confession because the environment that yields a confession bears on its reliability. Id. at 689, 106 S.Ct. at 2146. The trial court here fully complied with that holding. The jury heard the audio tapes of Doody's entire interrogation. All officers involved in taking his statement testified. The trial court excluded no evidence concerning the manner in which the police obtained Doody's confession. Moreover, contrary to Doody's statements on appeal, the trial court permitted Doody to present substantial evidence about the circumstances surrounding the interrogations of the Tucson Four. As noted above, two of the Tucson Four testified extensively about

their interrogations, and the jury heard the tape of a third interrogation. Doody made no offer of proof as to any additional evidence he wanted to introduce with respect to the circumstances surrounding the Tucson Four confessions, and therefore provides no basis for further review by this court. See Ariz. R. Evid. 103(a); see also Jones v. Pak-Mor Mfg. Co., 145 Ariz. 121, 129, 700 P.2d 819, 827, cert. denied, 474 U.S. 948, 106 S.Ct. 314, 88 L.Ed.2d 295 (1985).

Second, Doody failed to preserve for appeal the issue whether the trial court should have admitted Tucson Four evidence as relevant to establish the truth or falsity of Doody's confession. Arizona, like most other jurisdictions, has never held that showing the police obtained a false or involuntary confession from one defendant proves whether a second defendant's confession is false or involuntary. Assuming, without deciding, that substantial similarity of circumstances, interrogators, and defendants could render the voluntariness of one confession relevant to the issue of another confession's voluntariness, we find that Doody made no such showing in this case. Doody cites to no portion of the record, and our own review has disclosed none, in which he identified for the trial court the similarities between his interrogation and those of the Tucson Four that he now regards as sufficient to support his argument that the truthfulness of one is probative of the truthfulness of the other. Indeed, the record does not support even those general references Doody makes on appeal. For instance, although Doody categorically states on appeal that his confession was "obtained by the same police officers using many of the same

interrogation techniques" used with the Tucson Four, the record discloses substantial differences in approach and questioners. Doody also made no offer of proof describing the evidence he would offer to establish a link between interrogation techniques and falsity of statements.

Doody's averments to the court that he intended to present the Tucson Four evidence to establish the truth of their confessions, his failure to offer the Tucson Four evidence for the purpose of proving the falsity of his confession, and his failure to define which similarities he regarded as providing sufficient basis for comparing the confessions, lead us to conclude that Doody waived this argument on appeal.

IV.

Doody next argues that the trial court erred by restricting his cross-examination of Garcia with respect to unrelated crimes Garcia committed before and after the temple murders. Although the right to cross- examine a witness is vital to the right of confrontation, the trial court reserves discretion to curtail the scope of cross-examination to within "reasonable" limits. State v. Fleming, 117 Ariz. 122, 125, 571 P.2d 268, 271 (1977). We review a trial court's order restricting the scope of cross- examination on a case-by-case basis to determine whether the court unduly inhibited the defendant's ability to present information bearing on issues or on the credibility of witnesses. Id. The trial court exercises considerable discretion in determining the proper extent of cross-examination, and we will not disturb the court's ruling absent a clear

showing of prejudice. State v. Rodgers, 134 Ariz. 296, 301, 655 P.2d 1348, 1353 (App.1982).

Doody contends that the trial court improperly prohibited him from cross-examining Garcia about the details of the Cameron murder. Doody argued at trial that the details of the Cameron murder illustrated Garcia's motive and bias because, due to the aggravating factors of the Cameron murder, Garcia would have received the death penalty for that crime. If the details of the Cameron murder were admitted, Doody asserted, the evidence would demonstrate the extent of the benefit Garcia received under the terms of his plea agreement, which prohibited imposition of the death penalty. The court correctly rejected the introduction of the Cameron murder evidence, however, because the circumstances surrounding the Cameron murder were relevant only to whether a trial judge would have imposed the death penalty in a separate trial for that crime. See A.R.S. § 13-703. The trial court allowed Doody to illuminate the full extent of the benefit Garcia received by agreeing to testify against Doody. Graphic details of the Cameron murder would have added nothing of relevance to establish Garcia's motive or bias, and the trial court did not abuse its discretion by limiting Doody's cross-examination as to the details of the Cameron murder.

Doody next argues that the trial court erroneously prohibited him from cross-examining Garcia about the Cruz offenses. At trial, Doody argued that evidence disclosing the details of the Cruz offenses would further illustrate the benefit Garcia received under his plea agreement because, although the plea

agreement did not encompass the Cruz offenses, Garcia may have anticipated that the state would not prosecute him for those crimes in exchange for his testimony against Doody. Again, the trial court allowed Doody to question Garcia regarding the benefits he anticipated as part of his plea agreement, including whether he believed he would be exempt from prosecution for the Cruz offenses. As with the Cameron murder, the details of the Cruz offenses would have added nothing relevant to Garcia's motive or bias. We therefore affirm the court's ruling.

Doody also argues that the trial court should have allowed him to cross-examine Garcia about the Cruz offenses and other burglaries Garcia committed with Caratachea to impeach Garcia's character for truthfulness. Doody did not argue impeachment as a basis for admissibility, however, until this appeal. At trial, Doody argued only that evidence of past conduct involving Garcia and Caratachea was admissible to prove that Caratachea participated in the temple murders. The trial court correctly rejected Doody's proposed evidence as irrelevant, unduly prejudicial, and inadmissible under Rule 404(b) of the Arizona Rules of Evidence.

This court generally does not review evidentiary theories raised for the first time on appeal. Serna, 163 Ariz. at 267, 787 P.2d at 1063. In any event, we find no merit to impeachment as a basis for cross-examining Garcia regarding the Cruz offenses or the burglaries. On cross-examination, a party may inquire into specific instances of a witness's prior conduct for impeachment purposes only if the conduct is probative of the witness's character for truthfulness. Ariz. R. Evid.

608(b); State v. Woods, 141 Ariz. 446, 449, 687 P.2d 1201, 1204 (1984). Because Doody provides no support for his assertion that Garcia's past conduct bears any relation to his character for truthfulness, we find no error in the court's limitation of his cross-examination.

Doody argues alternatively that evidence of Garcia's past conduct with Caratachea establishes Garcia's motive and bias to implicate Doody and exculpate Caratachea in the temple murders. Doody also did not assert motive or bias as a basis for admissibility during trial proceedings and, as stated above, failure to argue an evidentiary theory in the trial court constitutes a waiver on appeal. Serna, 163 Ariz. at 267, 787 P.2d at 1063. Moreover, we find no merit in Doody's argument that Garcia's history of criminal activity with Caratachea influenced Garcia to favor Caratachea over Doody, given the fact that Doody also allegedly participated in at least some of the criminal activity.[6]

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[6] In support of his claim of error, Doody relies upon United States v. Robinson, 530 F.2d 1076 (D.C.Cir.1976). That decision recognizes that a trial court exercises discretion in deciding whether to permit cross- examination concerning other criminal activities to establish a witness's bias or motive to lie. In Robinson, the court merely concluded that the trial court did not abuse its discretion in admitting such evidence, after balancing the probative value against the prejudicial effect of the evidence. Moreover, the evidence at issue in Robinson involved "an ongoing affair related in subject matter and time to the transactions charged against defendant." Id. at 1081.

Doody also argues that the trial court erred by prohibiting him from establishing that Garcia had used the phrase "no witnesses" in connection with the Cameron murder. We find the limitation falls well within the trial court's discretion. Doody maintains that Garcia's use of the phrase "no witnesses" in the Cameron murder, which occurred shortly after the temple murders, supports the proposition that Garcia, rather than Doody, executed the temple victims so that "no witnesses" would remain. However, the trial court allowed Doody to question Garcia about his use of the phrase "no witnesses," and Garcia acknowledged at trial that he had used the phrase "no witnesses" after the temple murders. Moreover, Doody makes no showing of prejudice stemming from the court's limitation on his ability to link Garcia's use of the phrase "no witnesses" specifically to the Cameron murder. If any error occurred, it was harmless and provides no basis for reversal.

V.

Doody next contends that the trial court erroneously permitted Caratachea to invoke his right to remain silent.[7] Doody argues that Caratachea waived his right by testifying under oath at Doody's juvenile transfer hearing. We disagree.

In contrast, no direct connection exists between the temple murders and the other offenses involving Garcia and Caratachea. Under these circumstances, the trial court did not abuse its discretion in rejecting Doody's attempt to cross- examine Garcia about other uncharged criminal offenses.

[7] U.S. Const. amend. V.

A waiver of the fifth amendment privilege affects only the particular proceeding in which the waiver occurs. Nelson v. Hannah, 122 Ariz. 296, 297, 594 P.2d 550, 551 (App.1979) (citing Ottomano v. United States, 468 F.2d 269 (1st Cir.1972), cert. denied, 409 U.S. 1128, 93 S.Ct. 948, 35 L.Ed.2d 260 (1973)). Caratachea's waiver of his fifth amendment right at the juvenile transfer hearing, a proceeding separate from the trial, did not constitute a waiver of his right to refuse to testify at trial. See United States v. Licavoli, 604 F.2d 613, 623 (9th Cir.1979), cert. denied, 446 U.S. 935, 100 S.Ct. 2151, 64 L.Ed.2d 787 (1980) (holding that a witness may invoke the privilege against self-incrimination at trial despite testifying previously before a grand jury in the same case). Juvenile transfer hearings, like grand jury proceedings, determine whether further proceedings are appropriate; the testimony of a witness at a juvenile transfer hearing, like testimony at a grand jury proceeding, does not compromise the witness's later right to refuse to testify at trial in the same case.

Doody argues alternatively that Caratachea could claim no fifth amendment privilege with respect to certain burglaries for which he already had been adjudicated and that the trial court therefore should have required him to invoke his fifth amendment privilege with respect to his involvement in the temple murders in the presence of the jury. We disagree. In State v. McDaniel, 136 Ariz. 188, 665 P.2d 70 (1983), the court held that if "a witness could legitimately refuse to answer essentially all relevant questions, then that witness may be totally excused without violating an individual's

Sixth Amendment right to compulsory process." Id. at 194, 665 P.2d at 76. Here, the trial court disallowed evidence concerning Caratachea's previously adjudicated burglaries on the basis of relevance. McDaniel supports the trial court's decision because Caratachea legitimately could refuse to answer all relevant questions and therefore could be excused from invoking his right in front of the jury. Because Doody offers no convincing argument to establish the relevance of those burglaries, we find no error.

Doody further argues that the trial court erred in redacting Caratachea's prior testimony to eliminate references to Caratachea's prior crimes and misconduct. Doody contends that the trial court should have admitted evidence of Caratachea's criminal history for impeachment purposes. On appeal, Doody states that "Doody's counsel argued vigorously that it was improper to excise from Caratachea's prior testimony references to his myriad of other crimes, conduct with which Caratachea had been impeached by both the state and the defendant when he originally gave that testimony." The only citation to the record Doody provides refers this court to the transcript of Caratachea's prior testimony as redacted. Failure to provide citation to the record in support of an argument, as required by Rule 10(c)(1) of the Arizona Rules of Criminal Appellate Procedure, justifies this court in disregarding the argument. However, we have independently reviewed the objections Doody made to redaction. At no point did Doody object to the redaction of Caratachea's testimony regarding Caratachea's prior conduct on the basis that he wished to use the evidence for

impeachment. Failure to preserve impeachment as a basis for admissibility waives the issue on appeal. See Serna, 163 Ariz. at 267, 787 P.2d at 1063.

Finally, Doody argues that the trial court erred in permitting the state to withhold immunity from Caratachea while granting immunity to several prosecution witnesses. The state exercises sole discretion in granting immunity to witnesses. State v. Fisher, 141 Ariz. 227, 243, 686 P.2d 750, 766, cert. denied, 469 U.S. 1066, 105 S.Ct. 548, 83 L.Ed.2d 436 (1984). The state's refusal to grant a particular witness immunity does not violate a defendant's right to due process absent prosecutorial misconduct or, alternatively, a showing that the witness would present clearly exculpatory evidence and that the state has no strong interest in withholding immunity. State v. Axley, 132 Ariz. 383, 388, 646 P.2d 268, 273 (1982). Neither of those exceptions applies here, and we find no error.

VI.

Doody argues next that the trial court erred in its evidentiary rulings excluding testimony from James Herron. Prior to trial, Herron gave a sworn statement to investigators, in which he recounted conversations with Caratachea while they were in juvenile detention together. In the statement, Herron claimed that Caratachea had told him that Garcia, not Doody, shot the victims and that Doody believed he was participating in a war game at the temple. Herron also stated that Caratachea had boasted that his autograph would be valuable some day because of his involvement in the temple murders. Herron provided the officers a slip of paper

bearing Caratachea's signature as proof of the conversations. After Herron repeated his statements in a pretrial defense interview, Doody subpoenaed Herron to testify at trial. Herron failed to appear pursuant to the subpoena, however, and the trial court ruled that his sworn statement constituted inadmissible hearsay.

Herron's sworn statement contains two layers of hearsay, Caratachea's statements to Herron and Herron's statements to the investigators. We will uphold the trial court's exclusion of the sworn statement if either level fails to qualify for admission as an exception to the hearsay rule. See Ariz. R. Evid. 805; State v. McGann, 132 Ariz. 296, 298 n. 1, 645 P.2d 811, 813 n. 1 (1982). Doody argues that the exception for statements against interest applies to Caratachea's statements to Herron and that the residual hearsay exception for unavailable witnesses applies to Herron's sworn statement to the investigators.

The exception for statements against interest, set forth in Rule 804(b)(3), creates an exception for

> [a] statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not

> admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Ariz. R. Evid. 804(b)(3) (emphasis added). Because Caratachea's statements to Herron implicated him in the temple murders and were offered to exculpate Doody, the statements are inadmissible unless corroborating circumstances ensure the statements' trustworthiness.

In State v. Lopez, 159 Ariz. 52, 764 P.2d 1111 (1988), the court defined the standard for assessing the admissibility of a statement against interest:

> The trial judge should examine both the corroborating evidence and the contradictory evidence. The judge's inquiry should be limited to the question of "whether evidence in the record corroborating and contradicting the declarant's statement would permit a reasonable person to believe that the statement could be true." If the judge determines that a reasonable person could conclude that the statement could be true, the evidence comes in for the jury's consideration.

Id. at 54-55, 764 P.2d at 1113-14 (citations omitted) (quoting LaGrand, 153 Ariz. at 27, 734 P.2d at 569). Here, Caratachea's signature provides the only evidence corroborating his statements to Herron. At best, the signature corroborates that a conversation between Caratachea and Herron occurred; the signature provides little corroboration for

the substance of the conversation. Moreover, even if we were to regard the signature as providing the necessary corroboration to render Caratachea's statements to Herron admissible, the trial court correctly excluded Herron's account of Caratachea's statements, the outer layer of hearsay, as inadmissible.

Doody concedes that Herron's sworn statement summarizing his conversations with Caratachea fails to qualify for admission as former testimony under Rule 804(b)(1). Doody argues, however, that the trial court should have admitted Herron's sworn statement under the residual hearsay exception for unavailable witnesses, set forth in Rule 804(b)(5). The "catch-all" provision of Rule 804(b)(5) provides an exception for statements not covered by an established hearsay exception but "having equivalent circumstantial guarantees of trustworthiness...." Ariz. R. Evid. 804(b)(5). Thus, a statement proffered pursuant to Rule 804(b)(5) must have "particularized guarantees of trustworthiness" that the statement is "at least as reliable as evidence admitted under a firmly rooted hearsay exception." State v. Luzanilla, 179 Ariz. 391, 394, 880 P.2d 611, 614 (1994), cert. denied, --- U.S. ----, 115 S.Ct. 1406, 131 L.Ed.2d 293 (1995). To assess whether a statement bears the requisite indicia of trustworthiness, the trial court "may not consider corroborating evidence, but must instead look to 'the totality of circumstances ... that surround the making of the statement and that render the declarant particularly worthy of belief.' " Id. (quoting Idaho v. Wright, 497 U.S. 805, 819, 110 S.Ct. 3139, 3148, 111 L.Ed.2d 638 (1990)).

Doody sets forth the following factors as indicative of the sworn statement's reliability: (1) Herron made the statement voluntarily and under oath, (2) Herron did not know Doody and therefore had no motive to lie, (3) Herron's statement was taken by police officers and recorded by a court reporter, and (4) Herron made similar statements in other interviews. However, other factors cast doubt on the reliability of Herron's statement.

The trial court reviewed sealed documents describing Herron's mental condition and juvenile record, which related to his credibility. Although Herron made his statement under oath, "giving an oath prior to testifying, in and of itself, is not a circumstance making it highly unlikely for a person to lie--at least so unlikely that cross-examination would add little." Luzanilla, 179 Ariz. at 394-95, 880 P.2d at 614-15. Considering all the circumstances surrounding Herron's sworn statement, we find no error in the trial court's conclusion that Doody failed to make the requisite showing of reliability. Additionally, Herron's sworn statement does not constitute the type of rare or exceptional evidence contemplated by Rule 804(b)(5). See id. at 398, 880 P.2d at 618 (explaining that evidence "generally admissible under Rule 804(b)(1) but for its missing element" is not the type of evidence for which Rule 804(b)(5) provides an exception to the hearsay rule). For those reasons, we conclude that the trial court properly excluded Herron's sworn statement as inadmissible hearsay.

Doody next challenges the trial court's refusal to reopen the trial to accept Herron's testimony. Following closing arguments, the trial court heard,

through several layers of informants, that Herron may have agreed to surrender the next day. The court nevertheless proceeded to instruct the jury. When Herron later arrived at the court, Doody moved to reopen his case to present Herron's testimony. The trial court denied Doody's motion.

The trial court exercises its discretion in evaluating a motion to reopen. State v. Thomas, 110 Ariz. 120, 131, 515 P.2d 865, 876 (1973). In deciding whether to reopen, the trial court should consider whether "all the evidence, offered in good faith and necessary to the ends of justice has been heard." State v. Mendoza, 109 Ariz. 445, 448, 511 P.2d 627, 630 (1973) (quoting State v. Favors, 92 Ariz. 147, 149, 375 P.2d 260, 261 (1962)). We find no abuse of discretion in the trial court's decision not to reopen.

As discussed above, the subject of Herron's proposed testimony, Caratachea's statements, may well have constituted inadmissible hearsay. Even if admissible, Herron's testimony had little probative value. In his statement, Herron claimed that Caratachea told him that Doody believed he was playing a war game. However, Herron then clarified that Caratachea said that the war game included robbing the temple. Herron's statement also indicated that Doody was not tricked into participating in the events at the temple, as Doody claimed. In ruling against reopening, the trial court considered the attenuated nature of the proposed evidence, weighed against the prejudicial effect of allowing more testimony to be heard and conducting additional closing arguments, coupled with the suspicious timing of Herron's arrival. The trial court was in a far better

position than are we to determine the impact on the jury of reopening the trial, after closing arguments and instructions, for testimony from one witness. In light of the court's concerns, we cannot conclude that the trial court's decision constituted clear and manifest error.

Further, because the jury rejected the premeditated murder charges, any error in failing to reopen the case to accept Herron's testimony constitutes harmless error. Error is harmless "if we can say, beyond a reasonable doubt, that the error did not contribute to or affect the verdict." State v. Bible, 175 Ariz. 549, 588, 858 P.2d 1152, 1191 (1993), cert. denied, --- U.S. ----, 114 S.Ct. 1578, 128 L.Ed.2d 221 (1994). At best, Herron's testimony would have established that Doody believed he was participating in a war game to rob the temple, which may have negated premeditation. Herron's testimony, however, directly inculpated Doody on the charges of felony murder, the basis on which he was convicted. If Herron had testified, the effect would have been to strengthen the felony murder evidence against Doody. We therefore conclude, beyond a reasonable doubt, that the alleged error did not contribute to or affect the verdict.

VII.

For the reasons stated above, we affirm Doody's convictions and sentences.

Ruth V. McGregor, Judge

CONCURRING:

Sheldon H. Weisberg
President Judge

Philip E. Toci, Judge

SUPREME COURT

STATE OF ARIZONA

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NOEL K. DESSAINT
CLERK OF COURT

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

January 17, 1997

RE: **STATE OF ARIZONA vs. JONATHAN ANDREW DOODY**
Supreme Court No. CR-96-0600-PR
Court of Appeals No. 1 CA-CR 94-0120
Maricopa County No. CR 92-01232

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on January 14, 1997, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

Record returned to Court of Appeals, Division One, Phoenix, this 17th day of January, 1997.

NOEL K. DESSAINT, Clerk

TO:

Hon. Grant Woods, Arizona Attorney General
Attn: Paul J. McMurdie, Esq., and Crane McClennen, Esq,
Victoria B. Eiger, Esq., and Nathan Z. Dershowitz, Esq., Dershowitz & Eiger
Alan M. Dershowitz, Esq.
Johnathan A. Doody, DOC #1034339, Arizona State Prison, Florence
Glen Clark, Clerk, Court of Appeals, Division One
West Publishing
Lexis-Nexis

sb

DR. #91-16695
TAPE #1, SUBJECT: JONATHAN DOODY
INTERVIEWER(S): P. RILEY, D. MUNLEY
DATE OF INTERVIEW: OCTOBER 25, 1991, 2125 - 2212 HOURS
TRANSCRIBED: OCTOBER 30, 1991

RILEY: How ya doin' there, JONATHAN? Hey you know what ah, RICK is, RICK is tied up right now doing a few things ah, like I told you, I'm, I introduced you as, as, my name is PAT. This is ah DAVE MUNLEY, he's with the Sheriff's Office too.

DOODY: Hi.

MUNLEY: How you doing.

RILEY: Ah, if you don't mind I'd like to be able to just ah, I, I had a conversation with RICK about some of the things that he had discussed with ah you and some of the other guys before, so I'm familiar with most of the things that ah that he was asking questions about and things like that, so, what I'd like to do is just probably go ahead and do that with you ah, until RICK can break away and ah maybe come on in and join us a little bit later on.

DOODY: Okay.

RILEY: But ah to save time, uh and to get you back to doing what you need to do, might as well as just go ahead and, and start on things to save you some time and get

things squared away. Ah, what I'd like to do first though, Jonathan since we're in kind of a formal setting and things like that and because DAVE's a police officer and I'm a police officer and things like that ah sometimes some of the questions that we get into are, are a little bit sensitive and ah things like that. Ah, and what I'd like to do is before we, we go into that is ah, read something to you ah, and so that you understand some of the protections and things that ah, that you have. It's not meant to scare you or anything like that, ah don't ah don't take it out of context, okay.

DOODY: Okay.

RILEY: It's only something for, for your benefit and for our benefit, okay.

DOODY: Okay.

RILEY: And ah it's just so that you understand, and that ah, if you have any questions, by all means ask me, okay. I'd be more than happy to explain it to you and ah, and answer any questions that you have about anything, okay. So if there's a question that pops up in your mind at at any time, feel free to ask me, okay.

DOODY: Okay.

RILEY: Cause I'll, I'll be more than happy to explain it to you, okay?

DOODY: Okay.

RILEY: Ah, I'm sure you've heard this thing and you've heard it said on t.v. and things like that and it's not quite like t.v. portrays it ah, it's a little more, little less ah technical and a little less heavy if you want to put it ah that way, ah again, all it is, is its something that's ah for your benefit, as well as for our's, okay. Just so that you understand everything. What, what it's called is a Miranda Warning, okay. Have you hear that before?

DOODY: No.

RILEY: They call it Rights on t.v., okay. What, what that is and basically all that is Jonathan is, it's not necessarily something that is, like on t.v. where they portray it when somebody's ah guilty of doing something, ah, we read these things to people on somewhat of a regular basis, whether they're responsible for doing something or not, okay. So I don't want you to feel that because I'm reading this to you that we necessarily that you're responsible for anything, it's for your benefit, it's for your protection and for our's as well. okay?

DOODY: Okay.

RILEY: So as, as long as you understand that, I need to read this thing though, to you okay, and just

make sure you understand everything and again like I said if you have any questions, by all means ask me, okay.

DOODY: Yeah.

RILEY: Ah, let me first write a few things down here real quick, like the date and time, it being October 25th, it is October isn't it.

MUNLEY: Uh-huh.

RILEY: I've kind of lost track of time in the last few days. What do you got, nine, nine twenty-five?

MUNLEY: Yeah.

RILEY: Yeah, I was telling Jonathan on my way over here, my battery in my car phone went...

MUNLEY: Dead on you again.

RILEY: Went capoots.

MUNLEY: PAT probably already explained it to you, but while we're sitting here talking, if you need anything, feel free to go ahead and ask...

DOODY: Okay.

MUNLEY: ...if you need something to drink, use the bathroom, you know if you need something to eat, we'll provide it for your, okay.

DOODY: Thank you.

RILEY: Any time you feel like you got to go let us know, just tell me hey I got to got to the bathroom or I want a drink, we'll be more than happy to get it for you.

MUNLEY: You're in the R....R.O.T.C.?

DOODY: Uh-huh.

MUNLEY: At ah...

DOODY: Agua Fria.

MUNLEY: Agua Fria. How long have you been there?

DOODY: Humm, three years.

MUNLEY: Is that your uniform?

DOODY: Yeah.

MUNLEY: You guys have a special event tonight?

DOODY: Ah yeah, we had a football game and ah I had to present the colors.

MUNLEY: Oh yeah, you're on the rifle team too?

DOODY: Um, actually the Honor Guard. It's, let me see, Color Guard is basic like you have a Color Guard and people that carry the flag, you have the Honor Guard, people that do the rifle, and then you have your Drill Team, a lot of people that to do the rifle.

MUNLEY: Uh-huh.

DOODY: And I just happen to be in charge of the Honor Guard and the Color Guard.

MUNLEY: Uh-huh.

RILEY: So do you do both that stuff?

DOODY: Yeah.

RILEY: Pretty good at it?

DOODY: Kind of.

MUNLEY: Lot of fun?

DOODY: Yeah.

MUNLEY: That's good.

DOODY: Except when you drop the rifle.

MUNLEY: That's good training for you.

DOODY: Yeah.

RILEY: Hey JONATHAN ah, how old are you now?

DOODY: Seventeen.

RILEY: Seventeen? What's your birth date?

DOODY: Ah, ninth, May.

RILEY: Uh, ninth of May?

DOODY: Uh-huh.

RILEY: Okay and the year is what?

DOODY: '74

RILEY: '74? Okay. Yeah what, what would be your address that you're at right now or where you're staying?

DOODY: Ah 13, I'm not sure, I haven't memorized it yet.

RILEY: Just one of these fill in the blanks things here. Is that 13235 West Tuckey?

DOODY: Yeah, Glendale.

RILEY: Okay.

(short pause no conversation)

MUNLEY: Did you just move in over there?

DOODY: Uh-huh, about a month, never had the chance to memorize the uh, well memorize the street, just not the number.

RILEY: Is, is this ah, who's residence would this be that you're at?

DOODY: Ah, GARCIA, I forgot his first name.

RILEY: Is that a friend of your's?

DOODY: Yeah.

RILEY: Okay, so it's the ah, GARCIA's residence?

DOODY: Uh-huh.

RILEY: Okay. Okay and you're in what's, what grade in school right now?

DOODY: Eleven.

RILEY: Eleventh? Okay. An ah, what kind of grade are you getting right now in school, as far as ah in average?

DOODY: Ooh, I don't really don't know, cause the report card never came out yet.

RILEY: Okay ah, how about the last report card that you got what what kind of average did you get?

DOODY: About a B A.

RILEY: B average? Okay. They using letters or number now days or...

DOODY: Actually both.

RILEY: Both. The reason I ask that is just to get an idea of how well ah, you understand things and everything. Okay, and I'm just going to read these verbatim off the, the sheet here and then ah, as I said, if, if you have any questions by all means ask me, okay.

DOODY: Okay.

RILEY: And again, it's not meant to scare you so don't, don't take it out of context JONATHAN okay. Ah, what this is, is that ah you have the Right to Remain Silent and ah, what it states is that this means that you do not have to talk to me or answer any questions about ah, the matter that we're going to discuss with you, okay. You can be quiet if

you, if you wish. Okay, did you understand that?

DOODY: Uh-huh.

RILEY: Okay, ah, as we go here, they ah, they ask that you initial ah, here indicating that I read it to you and that you understand it. Ah, so if you could ah, as we go, I will go ahead and just have you initial in the box whether you do or you don't.

DOODY: Okay.

RILEY: Okay. And the next one is that Anything that you say can and will be used against you in a court of law and what this means is that anything that you tell me, I can use later against you in court and a court of law is a place where a judge will decide whether ah, you did something or whether you didn't do something, okay. And a judge is like an umpire in a baseball game. He decides whether you have acted in a right or wrong way, okay. Ah, if you did something wrong ah you may be punished and if you didn't you won't be punished, okay, Do you understand all of that?

DOODY: Uh-huh.

RILEY: Okay, if you could just initial there. Okay, and the next one states that you have the right to have an attorney present prior to and during questioning, and what that means that if you want one, you're allowed to have a lawyer

here before and during you know my questions to you, okay. And then an attorney is a lawyer who will speak for you and help you concerning the crime or any kind of offense that ah we might think that you or somebody else is involved in, if you were involved in it, okay. Again, it not necessarily mean that you are involved, but if you were, then that's what that would apply to okay. And do you understand that?

DOODY: Yeah.

RILEY: Any questions?

DOODY: No.

RILEY: Okay, Okie doke.

DOODY: Oh yeah what's this for?

RILEY: Ah, okay I'll, again I'm gonna go in and, and explain some things to you. Ah, in the next one states that if you cannot afford an attorney, you'd have the right to have one appointed for you prior to questioning okay, and what this means, is if you do do not have the money to get a lawyer ah, if you wished ah, one will be given to you free of charge before any questions and things like that, okay. Do you understand that?

DOODY: Uh-huh (indicating yes)

RILEY: Okay. Okay and there's one other thing under here and it says that

ah, do would you want to have your parent or guardian present during our conversation with you now?

DOODY: Ah, it doesn't matter.

RILEY: It doesn't matter?

DOODY: Uh-huh.

RILEY: Okay. Ah, so you will be willing to talk with us right now?

DOODY: Yeah.

RILEY: Okay. And, if you just initial there where it says ah, since you say it doesn't matter, and, and that you'd be willing to talk to us ah...

DOODY: No?

RILEY: ...No, would be apparently the right response. Okay. And there's one other statement here is that ah, the possibility exist that ah, if this was, was your case or something that you might be involved in ah, the possibility is that it could be handled by the adult court, and ah what that means is that a juvenile judge could decide ah, that ah, you, if you were responsible for something do not belong in a juvenile court because you're either too old or that you ah, may have committed a serious crime or have committed too many crimes before this particular one or anything else. And if you're taken to adult

court you may get more punishment than you'd receive in a juvenile court and that's all that basically says, okay. Do you understand that?

DOODY: Yeah.

RILEY: Okay.

DOODY: Ah...

RILEY: If you understand it then Yes would be the right one, yeah. Okay, okie doke. And at the bottom here is what it's saying is that if ah, you have no problem with ah talking to myself and David here right now, with ah, without anybody else present or attorney, or your parents, or, or anyone ah, then as I said we have some things we'd like to ask you and we'd like to do that. Ah, and if you have no problem with that, we'd like to talk to you about that. Ah, but if you want to then ah, to stop at any time, that's something you can do as well, okay. Uh, do you have any questions at all about any, any of these things I've, I've explained to you?

DOODY: Ah, No.

RILEY: Okay. Do you understand all the things that I have read to you?

DOODY: Yes.

RILEY: Okay. And all that says here is that you do understand all those, and if you do, if you'll just

initial the right box there. Okay. And again, is there any questions at all JONATHAN about, about any of that I read to you?

DOODY: No, no.

RILEY: Okay. Alrighty.

MUNLEY: That might be real overwhelming to you, but just try to relax, it is something that you know, it's kind of a formal thing that we have to do, and ah, you, you look a little nervous, you look real tense...

DOODY: Yeah.

MUNLEY: ...just try to relax and...

DOODY: Okay.

MUNLEY: ...i's gonna be ah...

RILEY: The ah, as, as DAVE said ah JONATHAN unfortunately in the job that we do, JONATHAN, we, we talk to people every day, an we ask them questions that are personal and sometimes ah, may implicate them in things that ah, could be conceived as a wrong or a crime or an offense or whatever you want to call it. And because of that, we have to make sure that we, we protect everybody's interest and we explained things to, to them and that's what that process entails, okay. It's just to make you understand and let you know what those are, and again like I said, it's not meant

to scare you or anything like that.

DOODY: Okay.

RILEY: Ah, what we wanted to discuss with you were some things in regards to ah, like I said before RICK had spoken to you earlier or, or several weeks ago I believe and ah, he had also spoken to ROLANDO, as you had indicated to me on the way up here. Ah, what I wanted to do is, is go into a little bit more than RICK had at the time and ah, what that centers around is ah, the ah, gun or the ah, the rifle that ah, ROLANDO had at the, that hid at the, at the place where he was staying at that time, okay. Ah, what, what was the address out there that uh, ROLANDO was staying at then RICK talked to you last, do you know?

DOODY: Ahh, well I don't remember the number, but I remember the apartment number and the street.